IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1080 OF 2007

Smt Vimal Balkrishna Kanade & Ors. ...Petitioners

Versus

Shri Dnyaneshwar Narhari Dhone & Ors. ...Respondents

Shri P.B.Shah for the Petitioners.
Shri G.S.Bhat for the Respondent Nos.1 to 3.
Shri A.Y.Sakhare, Sr counsel i/by Y.K.S.Legal for the Respondent No.4.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 27, 2007.

P.C.:

1. I have heard submissions of the learned counsel appearing for the parties. The challenge in this Writ Petition under Article 227 of the Constitution of India is to the order dated 14th December, 2006 passed by the learned trial Judge below Application at Exhibit 102. The Application at Exhibit 102 was filed by the Petitioners for amendment of pleadings. In the said Application at Exhibit 102 the prayers were made for permitting the Petitioners to carry out amendment to the plaint as well as to the Applications at Exhibit 59, 60 and 61. The learned trial Judge by the impugned order partly allowed the Application. The learned counsel appearing for the Petitioners has stated that he is pressing the Application at Exhibit 102 only in so far as it relates to the amendment of the plaint. He

submitted that the part of the amendment which is not granted by the trial Court is based on the subsequent events and therefore, the Court ought to have allowed the amendment. The learned counsel appearing for the Respondents supported the impugned order by pointing out that considering the frame of the suit, the Court was justified in rejecting the prayer for amendment.

2. The suit filed by the Petitioners is for declaration that the Petitioners have 1/8th undivided share in the suit property as well as in the business of ware-house. Prayer for partition and separate possession is also made. A prayer is also made for injunction restraining the original Defendant Nos.1 and 2 from carrying on any construction.

3. The amendment which is rejected is in relation to prayer clause (d) of the plaint. Prayer clause (d) in the plaint is for decree of partition and separate possession of 1/8th share of the Petitioners in the suit property. The amendment which was sought to be made was for granting possession of the separate share of the Petitioners after removing the newly made construction on the suit property. It is alleged that the construction has been made during the pendency of the suit. In my view, there was no reason to disallow that

part of the amendment as the same does not change the nature of the suit. The trial Court has committed an error by not granting that part of the amendment. To that extent the Petition must succeed and hence, I pass the following order:

(i) The impugned Judgment and Order dated 14th December, 2004 is modified.

(ii) Application at Exhibit 102 is allowed in its entirety in so far as the amendment to the plaint is concerned.

(iii) It is, however, clarified that the application is not granted in so far as prayers for amendment of Exhibits 59, 60 and 61 are concerned.

(iv) The amendment shall be carried out within two weeks from the date of receipt of writ of this order by the trial Court.

(v) The trial Court will permit the Defendants to file additional written statement, if any, to the amended plaint within a period of six weeks from the date on which amendment is carried out.

(vi) If the trial Court finds that additional court fee is required to be paid on the amended prayer, it will be open for the trial Court to pass appropriate direction in that behalf.

(vii) All contentions of the parties on merits are expressly kept open.

(viii) Hearing of the suit is expedited.

(ix) Writ Petition is partly allowed in above terms.

JUDGE